H/1 & 2

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR.

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:: O R D E R ::

(1) Murlidhar Sharma Vs. Rent Control Tribunal & Anr.

S.B. CIVIL WRIT PETITON NO.2796/2006.

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(2) Murlidhar Sharma Vs. Rent Control Tribunal & Anr.

S.B. CIVIL WRIT PETITON NO.2797/2006.

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Date of Order :: 7th August 2007.

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Rajesh Choudhary, for the petitioner.
Mr. Shyam Singh Bhati, for the respondent No.2.

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BY THE COURT:

Though the orders impugned in these two petitions preferred by the tenant relate to different issues and different eviction petitions; but for the litigation being between the same parties and for the stand taken in these petitions, it appears convenient as well as proper to decide both these petitions by this common order.

Background facts in relation to CWP 2796/2006 are that in Eviction Petition No.439/2005 filed for eviction from shop No.3 at Plot No.214, Pal Link Road, Jodhpur on the

ground of default in payment of rent, the petitioner-tenant took the defence that he had made deposits of rent in the bank account of landlord on 04.06.2004 and on 26.08.2004 and asserted that there was no rent due. It appears that on 26.07.2005, the respondent-landlord moved an application stating that upon obtaining the bank statement it was noticed that no such amount was deposited in his bank account; and it was prayed that the bank statement may be taken on record. By the impugned order dated 15.05.2006 (Annex.5), the Tribunal has taken such statement of account on record.

CWP No.2797/2006 relates to the other Eviction Petition No.410/2004 filed by the respondent-landlord against the petitioner-tenant seeking eviction from shop No.2 at the same address (supra), inter alia, on the ground of reasonable and bonafide requirement of the landlord and non-user of the premises by the tenant. In this petition, the present petitioner sought permission to cross-examine the witnesses of the applicant and his application dated 21.03.2006 has been rejected by the impugned order dated 15.05.2006 (Annex.7) on the consideration that earlier the tenant had moved a similar application on 07.10.2005 and the matter remained pending for arguments on the said application quite long and then, on 10.01.2006 the tenant got dismissed the said application as not pressed; and the application now filed by the tenant on the same proposition, seeking permission to

cross-examine the witnesses of the applicant, was not maintainable.

On these matters being taken up for hearing, learned counsel appearing for the petitioner, in all fairness, submitted that the petitioner does not intend to put much emphasis in relation to CWP No.2796/2006 wherein by the impugned order dated 15.05.2006 (Annex.5), the Tribunal has allowed the document produced by the applicant-landlord to be taken on record. However, while pressing on the grounds in CWP No. 2797/2006, learned counsel for the petitioner submitted that the Tribunal has been in error in passing the order dated 15.05.2006 (Annex.7) in Eviction Petition No.410/2004 denying opportunity to cross-examine the witnesses of landlord; and the said order deserves to be interfered with. Learned counsel appearing for the respondent-landlord in equal fairness submitted that when the petitioner-tenant is not pressing upon his writ petition No.2796/2006, and in view of the subject matter of litigation, the respondent-landlord shall be agreeable if an opportunity for cross-examination is afforded to the petitioner.

Having examined both these matters, this Court is satisfied that the learned counsel for the parties have fairly chosen their respective stand. While the order dated 15.05.2006 (Annex.5), subject matter of CWP No.2796/2006, even otherwise does not call for interference for the landlord

has only been permitted to produce copy of his bank account, learned counsel for the petitioner-tenant has rightly not pressed the said writ petition.

However, the order dated 15.05.2006 (Annex.7) passed in Eviction Petition No.410/2004 cannot be said to have been passed in valid exercise of jurisdiction under Section 21 of the Act of 2001. Merely because an application seeking permission to cross-examine the landlord's witnesses was earlier moved by the tenant on 07.10.2005 and the same was not pressed on 10.01.2006, it cannot be said that the tenant stands precluded forever from making any such prayer at the later stage of the proceedings. Moreover, it appears from the contents of the two applications moved by the tenant that in the earlier application moved on 07.10.2005 (Annex.4), the tenant has not mentioned specific reasons or points in consideration whereof permission for cross-examination could have been granted. In the later application dated 21.03.2006 (Annex 6), the tenant has stated various points and facts that require determination and in relation whereof cross-examination is requisite. The Tribunal was definitely in error in passing the impugned order dated 15.05.2006 (Annex.7) in Eviction Petition No.410/2004 and in rejecting the application merely with reference to the fact that earlier an application for cross-examination moved by the tenant was dismissed as not pressed. Learned counsel for the respondent-landlord has,

therefore, rightly not attempted to justify the said order dated 15.05.2006 (Annex.7) that deserves to be set aside; and the learned Tribunal deserves to deal with the prayer for cross-examination in accordance with law as explained by the Division Bench decision of this Court in Aasandas Vs. State of Rajasthan & Ors. : 2005 WLC (UC) 318.

As a result of the aforesaid, while CWP No.2796/2006 is dismissed as not pressed, CWP No.2797/2006 is allowed to the extent indicated above; the impugned order dated 15.05.2006 (Annex.7) made in relation to Eviction Petition No.410/2004 is quashed and set aside. Having regard to the circumstances of the case and the subject matter of litigation, it is also considered appropriate and hence ordered that the learned Rent Tribunal shall pass order afresh on the application (Annex.6) moved under Section 21 of the Act while permitting cross-examination keeping in view the observations made above and those contained in Division Bench decision in the case of Aasandas (supra).

The parties shall bear their own costs of both these writ petitions.

(DINESH MAHESHWARI), J.

Mohan/

S.B. CIVIL WRIT PETITON NO.2797/2006.

Murlidhar Sharma

Vs.

Rent Control Tribunal & Anr.

Date of Order :: 7th August 2007.

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Rajesh Choudhary, for the petitioner.
Mr. Shyam Singh Bhati, for the respondent No.2.

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The writ petition is allowed to the extent indicated in common order made in S.B. Civil Writ Petition No.2796/2006 : Murlidhar Sharma Vs. Rent Control & Anr.

By Order,

COURT MASTER